

Article 22.

General Regulations.

Part 1. Health Certificate.

**§ 115C-323. Employee health certificate.**

(a) Any person initially employed in a public school or reemployed in a public school after an absence of more than one school year shall provide to the superintendent a certificate certifying that the person does not have any physical or mental disease, including tuberculosis in the communicable form or other communicable disease, that would impair the person's ability to perform his or her duties effectively. A local board or a superintendent may require any school employee to take a physical examination when considered necessary.

Any public school employee who has been absent for more than 40 successive school days because of a communicable disease shall, before returning to work, provide to the superintendent a certificate certifying that the individual is free from any communicable disease.

(b) One of the following individuals shall prepare any certificate required under this section:

- (1) A physician licensed to practice in North Carolina.
- (2) A nurse practitioner approved under G.S. 90-18(14).
- (3) A physician's assistant licensed to practice in North Carolina.

(c) Notwithstanding subsection (b) of this section, in the case of a person initially employed in a public school, any of the following who holds a current unrestricted license or registration in another state may prepare the certificate so long as evidence of that license or registration is on the certificate:

- (1) A physician.
- (2) A nurse practitioner.
- (3) A physician's assistant.

(d) The certificate shall be prepared on a form supplied by the Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been conducted, at the time of the certification, in accordance with rules adopted by the Superintendent of Public Instruction, with approval of the Secretary of Health and Human Services. These rules may require an X-ray chest examination for all new employees of the public school system.

(e) It shall be the duty of the superintendent of the school in which the person is employed to enforce the provisions of this section. Any person violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14; 1973, c. 476, s. 128; 1975, c. 72; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 20; 1991, c. 342, s. 4; 1993, c. 539, s. 886; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.50; 2001-118, s. 1.)

Part 2. Payment of Wages After Death of Employee.

**§ 115C-324. Disposition of payment due employees at time of death.**

In the event of the death of any superintendent, teacher, principal, or other school employee to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such

services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G.S. 28A-25-6. (1955, c. 1372, art. 18, s. 8; 1965, c. 395; 1981, c. 423, s. 1; 2009-570, s. 38.)

### Part 3. Principal and Teacher Employment Contracts.

#### **§ 115C-325. System of employment for public school teachers.**

(a) Definition of Terms. – Notwithstanding G.S. 115C-325.1, as used in this section, the following definitions apply, unless the context requires otherwise:

- (1) Repealed by Session Laws 1997-221, s. 13(a).
- (1a) "Career employee" as used in this section means an employee who was awarded career status with that local board as a teacher prior to August 1, 2013.
- (1b), (1c) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (1d) Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
- (2) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (3) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.
- (4a) "Disciplinary suspension" means a final decision to suspend a career employee without pay for no more than 60 days under G.S. 115C-325(f)(2).
- (4b) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (4c) "Hearing officer" means a person selected under G.S. 115C-325(h)(7).
- (5) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (5a) [Expired.]
- (5b) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A license or a regular, not provisional or expired, vocational license issued by the State Board of Education; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position.
- (7) Redesignated.

(8) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(a1) This section shall apply only to career employees. No person who is employed as a teacher who did not acquire career status as a teacher by August 1, 2013, shall have career status.

(b) Personnel Files. – The superintendent shall maintain in his or her office a personnel file for each career employee that contains any complaint, commendation, or suggestion for correction or improvement about the career employee's professional conduct, except that the superintendent may elect not to place in a career employee's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the career employee's file only after five days' notice to the employee. Any denial or explanation relating to such complaint, commendation, or suggestion that the career employee desires to make shall be placed in the file. Any career employee may petition the local board of education to remove any information from his or her personnel file that he or she deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the career employee's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a career employee before his or her employment by the board may be kept in a file separate from his or her personnel file and need not be made available to him or her. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a career employee, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

(c) (1) through (3) Repealed.

(4) Leave of Absence. – A career employee who has been granted a leave of absence by a board shall maintain his or her career status if he or she returns to his or her teaching position at the end of the authorized leave.

(5), (6) Repealed.

(d) Career Employees.

(1) A career employee shall not be subjected to the requirement of annual appointment nor shall he or she be dismissed, demoted, or employed on a part-time basis without his or her consent except as provided in subsection (e) of this section.

(2) a. Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

b. Repealed by Session Laws 1997, c. 221, s. 13(a).

c. Subject to G.S. 115C-287.1, when a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his or her employment for the next school year. The board shall give him or her written notice of that decision by June 1 of his or her third year of employment as a supervisor

or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him or her of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he or she shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

(e) Grounds for Dismissal or Demotion of a Career Employee.

(1) Grounds. – No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

- a. Inadequate performance.
- b. Immorality.
- c. Insubordination.
- d. Neglect of duty.
- e. Physical or mental incapacity.
- f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
- g. Conviction of a felony or a crime involving moral turpitude.
- h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
- i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State.
- j. Failure to comply with such reasonable requirements as the board may prescribe.
- k. Any cause which constitutes grounds for the revocation of the career employee's teaching license.
- l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2) of this subsection.
- m. Failure to maintain his or her license in a current status.
- n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
- o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Reduction in Force. –

- a. A local board of education shall adopt a policy for implementing a reduction in force pursuant to sub-subdivision (e)(1)l. of this section that includes the following criteria:

1. In determining which positions shall be subject to a reduction, a local board of education shall consider the following:
    - I. Structural considerations, such as identifying positions, departments, courses, programs, operations, and other areas where there are (i) less essential, duplicative, or excess personnel; (ii) job responsibility and position inefficiencies; (iii) opportunities for combined work functions; and (iv) decreased student or other demands for curriculum, programs, operations, or other services.
    - II. Organizational considerations, such as anticipated organizational needs of the local school administrative unit and program or school enrollment.
  2. In identifying which career employees in similar positions shall be subject to a dismissal, demotion, or reduction to employment on a part-time basis under the policy, a local school administrative unit shall consider work performance and evaluations.
- b. Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)/., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his or her intention to make such recommendation and shall set forth as part of his or her recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he or she shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a hearing officer shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)/.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)/., above, his or her name shall be placed on a list of available career employees to be maintained by the board.

- (3) Inadequate Performance. – In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance

with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance. Inadequate performance for a career employee shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard. For a career employee, a performance rating below proficient shall constitute inadequate performance unless the principal noted on the instrument that the career employee is making adequate progress toward proficiency given the circumstances.

- (4) Three-Year Limitation on Basis of Dismissal or Demotion. – Dismissal or demotion under subdivision (1) above, except paragraphs g. and o. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal or demotion is mailed to the career employee. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a career employee's sexual misconduct toward or sexual harassment of students or staff.
- (f) (1) Suspension without Pay. – If a superintendent believes that cause exists for dismissing a career employee for any reason specified in G.S. 115C-325(e)(1) and that immediate suspension of the career employee is necessary, the superintendent may suspend the career employee without pay. Before suspending a career employee without pay, the superintendent shall meet with the career employee and give him or her written notice of the charges against him or her, an explanation of the bases for the charges, and an opportunity to respond. However, if the career employee is incarcerated or is in the custody of a local, State, private, or federal correctional facility, the superintendent shall not be required to meet with the career employee before suspending that employee without pay but may instead provide written notice of the charges against the employee, provide a written explanation of the basis for the charges, and provide an opportunity for the employee to respond in writing. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the career employee shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the career employee's personnel file.

- (2) Disciplinary Suspension Without Pay. – A career employee recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.
- a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. – The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:
    - 1. The recommended disciplinary suspension without pay is for more than 10 days; or
    - 2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the career employee's license, or providing false information.
  - b. Board hearing for disciplinary suspensions of no more than 10 days. – The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in sub-sub-subdivision a.2. of this subdivision.

(f1) Suspension with Pay. – If a superintendent believes that cause may exist for dismissing or demoting a career employee for any reasons specified in G.S. 115C-325(e)(1), but that additional investigation of the facts is necessary and circumstances are such that the career employee should be removed immediately from his or her duties, the superintendent may suspend the career employee with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of his or her action and shall notify the career employee within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the career employee within the 90-day period, the career employee shall be reinstated to his or her duties immediately and all records of the suspension with pay shall be removed from the career employee's personnel file at his or her request. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

(f2) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(g) Repealed by Session Laws 1997, c. 221, s. 13(a).

(h) Procedure for Dismissal or Demotion of Career Employee.

- (1) A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.
- (2) Before recommending to a board the dismissal or demotion of the career employee, the superintendent shall give written notice to the career employee by certified mail or personal delivery of his or her intention to make such recommendation and shall set forth as part of his or her recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and provide written notice of the charges against the career employee, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the career employee within 14 days after the date of receipt of the notice requests a review, he or she may request to have the grounds for the proposed recommendations of the superintendent reviewed by an impartial hearing officer appointed by the Superintendent of Public Instruction as provided for in G.S. 115C-325(h)(7). A copy of G.S. 115C-325 shall also be sent to the career employee. If the career employee does not request a hearing before a hearing officer within the 14 days provided, the superintendent may submit his or her recommendation to the board.
- (3) Within the 14-day period after receipt of the notice, the career employee may file with the superintendent a written request for either (i) a hearing on the grounds for the superintendent's proposed recommendation by a hearing officer or (ii) a hearing within 10 days before the board on the superintendent's recommendation. If the career employee requests an immediate hearing before the board, he or she forfeits his or her right to a hearing by a hearing officer. If no request is made within that period, the superintendent may file his or her recommendation with the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the career employee without pay. If a request for review is made, the superintendent shall not file the recommendation for dismissal with the board until a report of the hearing officer is filed with the superintendent. Failure of the hearing officer to submit the report as required by G.S. 115C-325(i1)(1) shall entitle the career employee to a hearing before the board under the same procedures as provided in G.S. 115C-325(j).
- (4) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (5) Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.



- (6) If a career employee requests a review by a hearing officer, the superintendent shall notify the Superintendent of Public Instruction within five days of his or her receipt of the request.
- (7) Within five days of being notified of the request for a hearing before a hearing officer, the Superintendent of Public Instruction shall submit to both parties a list of hearing officers trained and approved by the State Board of Education. Within five days of receiving the list, the parties may jointly select a hearing officer from that list, or, if the parties cannot agree to a hearing officer, each party may strike up to one-third of the names on the list and submit its strikeout list to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall then appoint a hearing officer from those individuals remaining on the list. Further, the parties may jointly agree on another hearing officer not on the State Board of Education's list, provided that individual is available to proceed in a timely manner and is willing to accept the terms of appointment required by the State Board of Education. No person eliminated by the career employee or superintendent shall be designated as the hearing officer for that case.
- (8) The superintendent and career employee shall serve a copy to the other party of all documents submitted to the Superintendent of Public Instruction and to the designated hearing officer and include a signed certificate of service similar to that required in court pleadings.
- (h1) Hearing Officers; Qualifications; Training; Compensation. –
  - (1) The State Board of Education shall select and maintain a master list of no more than 15 qualified hearing officers. The State Board shall, except for good cause shown, remove a hearing officer from the list who has failed to conduct a hearing or prepare a report within the time specified in G.S. 115C-325(i1) or who has failed to submit a supplemental report in accordance with G.S. 115C-325(i1)(4) or (j1)(2). A hearing officer shall, except for good cause shown, also be removed from the list for failure to meet the terms and conditions of engagement established by the State Board. Additionally, if a hearing officer is not appointed to a case within a two-year period due to repeated strikes from the list by either party as provided in G.S. 115C-325(h)(7), the State Board may remove the hearing officer from the master list.
  - (2) Persons selected by the State Board as hearing officers shall be members in good standing of the North Carolina State Bar who have demonstrated experience and expertise in the areas of education law, due process, administrative law, or employment law within the last five years. The State Board shall give special consideration in its selection to persons jointly endorsed by the largest by membership of each statewide organization representing teachers, school administrators, and local boards of education. Following State Board selection, hearing officers

must complete a special training course approved by the State Board of Education that includes training on the teacher evaluation instrument and performance standards before they are qualified to hear teacher dismissal or demotion cases.

- (3) The State Board of Education shall determine the compensation for a hearing officer. The State Board shall pay the hearing officer's compensation and authorized expenses.
- (i) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (il) Report of Hearing Officer; Superintendent's Recommendation. –
  - (1) The hearing officer shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 90 days from the time of the designation. This time period may be extended only for extraordinary cause and upon written agreement by both parties. The State Board of Education shall determine an appropriate reduction in compensation to the hearing officer for failure to submit a timely report to the superintendent within the maximum 90-day period set forth in this subdivision, except upon a showing of good cause by the hearing officer.
  - (2) The hearing officer shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The hearing officer shall not make a recommendation as to conclusions of law or the disposition of the case. The hearing officer shall deliver copies of the report to the superintendent and the career employee.
  - (3) Within five days after receiving the hearing officer's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.
  - (4) If the superintendent contends that the hearing officer's report fails to address a critical factual issue, the superintendent shall within five days' receipt of the hearing officer's report, request in writing with a copy to the career employee that the hearing officer prepare a supplement to the report. The superintendent shall specify what critical factual issue the superintendent contends the hearing officer failed to address. If the hearing officer determines that the report failed to address a critical factual issue, the hearing officer shall prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. In no event shall the hearing officer take more than 30 days to provide a supplemental report. If the hearing officer fails to submit a timely supplemental report, the superintendent shall report the hearing officer to the State Board. The State Board shall determine an

appropriate reduction in compensation to the hearing officer for failure to submit a timely supplemental report to both parties, except upon a showing of good cause by the hearing officer. The failure of the hearing officer to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing by a Hearing Officer. – The following provisions shall apply to a hearing conducted by the hearing officer.

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.
- (3) At the hearing the career employee and the superintendent or the superintendent's designee shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.
- (4) Rules of evidence shall not apply to a hearing conducted by a hearing officer. The hearing officer may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.
- (5) At least five days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the superintendent intends to present. At least three days before the hearing, the career employee shall provide to the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the career employee intends to present. Additional witnesses or documentary evidence may not be presented except upon a finding by the hearing officer that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.
- (5a) The hearing shall be completed within three days after commencement, unless extended by the hearing officer on a showing of extraordinary cause. Neither party shall have more than eight hours to present its case in chief, which does not include cross-examination of witnesses, rebuttal evidence, or arguments of counsel.
- (6) The hearing officer may issue subpoenas, at his or her discretion or upon written application by either party, and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.

- (7) The hearing officer shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
- (8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the hearing officer.
- (j1) Board Determination. –
  - (1) Within five days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within five days after receiving the career employee's request for a board hearing, the superintendent shall request that a transcript of the hearing be made. Within five days of receiving a copy of the transcript, the superintendent shall submit to the board the written recommendation and shall provide a copy of the recommendation to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the hearing officer's report and a copy of the transcript of the hearing.
  - (2) If the career employee contends that the hearing officer's report fails to address a critical factual issue the career employee shall, at the same time he or she notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the hearing officer prepare a supplement to the hearing officer's report. The career employee shall specify the critical factual issue he or she contends the hearing officer failed to address. If the hearing officer determines that the report failed to address a critical factual issue, the hearing officer shall prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. In no event shall the hearing officer take more than 30 days to provide a supplemental report. If the hearing officer fails to submit a timely supplemental report, the superintendent shall report the hearing officer to the State Board. The State Board shall determine an appropriate reduction in compensation to the hearing officer for failure to submit a timely supplemental report to both parties, except upon a showing of good cause by the hearing officer. The failure of the hearing officer to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.
  - (3) Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for

the hearing and shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

- (4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).
- (5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.
- (6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. – The following procedures shall apply to a hearing conducted by the board:

- (1) The hearing shall be private.
- (2) If the career employee requested a hearing by a hearing officer, the board shall receive the following:
  - a. The whole record from the hearing held by the hearing officer, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.
  - b. The hearing officer's findings of fact, including any supplemental findings prepared by the hearing officer under G.S. 115C-325 (i1)(4) or G.S. 115C-325(j1)(2).
  - c. Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
  - d. The superintendent's recommendation and the grounds for the recommendation.
- (3) If the career employee did not request a hearing by a hearing officer, the board shall receive the following:
  - a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the career employee seven days before the hearing.
  - b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.
  - c. The superintendent's recommendation and the grounds for the recommendation.

- (4) The superintendent and career employee may submit a written statement not less than three days before the hearing.
- (5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.
- (6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the hearing officer.
- (7) The board shall accept the hearing officer's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the hearing officer did not address a critical factual issue, the board may remand the findings of fact to the hearing officer to complete the report to the board. If the hearing officer does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the hearing officer. The board's determination shall be based upon a preponderance of the evidence.
- (8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions and for Reductions in Force. – The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2) and G.S. 115C-325(f)(2)a:

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.
- (3) At the hearing, the career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a. or whether the grounds for a dismissal or demotion due to a reduction in force is justified.
- (4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

- (5) At least eight days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.
- (6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.
- (7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.
- (8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.
- (9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
- (10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.
- (k), (l) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (m) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (n) Appeal. – Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(f)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed on one or more of the following grounds that the decision:
  - (1) Is in violation of constitutional provisions.
  - (2) Is in excess of the statutory authority or jurisdiction of the board.
  - (3) Was made upon unlawful procedure.
  - (4) Is affected by other error of law.
  - (5) Is unsupported by substantial evidence in view of the entire record as submitted.
  - (6) Is arbitrary or capricious.

This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A career employee who has been demoted

or dismissed who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation. –

(1) If a career employee has been recommended for dismissal under G.S. 115C-325(e)(1) and the employee chooses to resign without the written agreement of the superintendent, then:

- a. The superintendent shall report the matter to the State Board of Education.
- b. The career employee shall be deemed to have consented to (i) the placement in the employee's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this employee to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.
- c. The career employee shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the employee's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the career employee's license within 45 days from the date of resignation.

(2) A career employee who is not recommended for dismissal should not resign without the consent of the superintendent unless he or she has given at least 30 days' notice. If a career employee who is not recommended for dismissal does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the career employee's license for the remainder of that school year. A copy of the request shall be placed in the career employee's personnel file. If a career employee's criminal history is relevant to the employee's resignation, regardless of whether the employee has given at least 30 days' notice, the board shall report to the State Board of Education the reason for an employee's resignation.

(p) Section Applicable to Certain Institutions. – Notwithstanding any law or regulation to the contrary, this section shall apply to all career employees employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, and Public Safety regardless of the age of the students.

(p1) Procedure for Dismissal of Career Employees Employed in Low-Performing Residential Schools. –



- (1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of career employees assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a career employee when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the career employee.

The Secretary may dismiss a career employee when:

- a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and
- b. That assistance team makes the recommendation to dismiss the career employee for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a career employee may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of licensed career employees who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed career employee.

Within 30 days of any dismissal under this subdivision, a licensed career employee may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to licensed career employees recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (3) Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.
  - (4) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
  - (5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.
- (q) Procedure for Dismissal of Career Employees Employed in Low-Performing Schools. –
- (1) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
  - (2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of career employees assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a career employee when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the career employee.
- The State Board may dismiss a career employee when:
- a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and
  - b. That assistance team makes the recommendation to dismiss the career employee for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.
- A career employee may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.
- (2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of licensed career employees who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed career employee.

A licensed career employee may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed career employees recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

- (3), (4) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8; 1997-221, ss. 11(a), 13(a); 1997-443, s. 11A.118(a); 1998-5, s. 2; 1998-59, s. 3; 1998-131, s. 6; 1998-202, s. 4(o); 1998-212, s. 28.24(c); 1998-217, s. 67.1(a); 1999-96, ss. 1-5; 1999-456, s. 34; 2000-67, s. 8.24(b); 2000-137, s. 4(r); 2000-140, ss. 23, 24; 2001-376, s. 2; 2001-424, ss. 28.11(g), 32.25(b); 2001-487, s. 74(c); 2002-110, ss. 2, 3; 2002-126, ss. 7.38, 28.10(a), (c), (d); 2003-302, s. 1; 2004-81, s. 2; 2004-124, ss. 31.18A(a), (c), (d); 2004-199, s. 57(b); 2005-144, ss. 7A.1, 7A.3, 7A.4; 2005-276, ss. 29.28(b), 29.28(d); 2007-145, ss. 7(a), (c)-(e); 2007-326, ss. 2, 3(a), (c)-(e); 2007-484, s. 43.7E; 2009-326, s. 1; 2010-31, s. 7.14(a); 2010-163, s. 1; 2011-145, ss. 7.23(b), 7.25(e); 2011-348, ss. 1, 8.5(a), (b); 2012-83, s. 40; 2012-194, ss. 21(a), (b); 2013-360, ss. 9.6(a), (f); 2014-115, s. 9; 2015-241, s. 8.38(b); 2017-157, ss. 2(a), (b), (p); 2017-186, s. 2(eeeee); 2017-189, ss. 4(c), (d), 6(j), (k).)

**§ 115C-325.1. (See Editor's note for applicability) Definitions.**

Except as otherwise provided in G.S. 115C-325, as used in this Part, the following definitions apply:

- (1) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.
- (2) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator during the time of the contract. The word "demote" does not include the following:

- a. A suspension without pay pursuant to G.S. 115C-325.5(a).
  - b. The elimination or reduction of bonus payments, including merit-based supplements or a systemwide modification in the amount of any applicable local supplement.
  - c. Any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.
  - d. Any reduction of pay as compared to a prior term of contract.
  - e. Any reduction in a principal's salary resulting from a reduction in State funds due to (i) school growth scores, as provided in the Principal Salary Schedule, or (ii) a decline in the average daily membership of the principal's school.
- (3) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325.5(b).
- (4) "Residential school" means a school operated by the Department of Health and Human Services that provides residential services to students pursuant to Part 3A of Article 3 of Chapter 143B of the General Statutes or a school operated pursuant to Article 9C of Chapter 115C of the General Statutes.
- (5) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program, as provided in G.S. 115C-287.1(a)(3).
- (6) "Teacher" means a person meeting each of the following requirements:
- a. Who holds a current professional educator's license.
  - b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.
  - c. Who is employed to fill a full-time, permanent position.
- (7) "Year" means a calendar year beginning July 1 and ending June 30. (2013-360, s. 9.6(b); 2017-157, s. 2(h); 2017-189, s. 6(c); 2018-5, s. 8.2(f).)

**§ 115C-325.2. (See Editor's note for applicability) Personnel files.**

(a) Maintenance of Personnel File. – The superintendent shall maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information

from the teacher's personnel file that the teacher deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

(b) **Inspection of Personnel Files.** – The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before the teacher's employment by the board may be kept in a file separate from the teacher's personnel file and need not be made available to the teacher. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325.4(a)(7) or G.S. 115C-325.4(a)(14) as grounds for dismissal or demotion. (2013-360, s. 9.6(b).)

### **§ 115C-325.3. (See Editor's note for applicability) Teacher contracts.**

(a) **Length of Contract.** – A contract between the local board of education and a teacher who has been employed by the local board of education for less than three years shall be for a term of one school year. A contract or renewal of contract between the local board of education and a teacher who has been employed by the local board of education for three years or more shall be for a term of one, two, or four school years.

(b) **Superintendent Recommendation to Local Board.** – Local boards of education shall employ teachers upon the recommendation of the superintendent. If a superintendent intends to recommend to the local board of education that a teacher be offered a new or renewed contract, the superintendent shall submit the recommendation to the local board for action and shall include in the recommendation the length of the term of contract. A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated by proficiency on the evaluation instrument. The local board may approve the superintendent's recommendation, may decide not to offer the teacher a new or renewed contract, or may decide to offer the teacher a renewed contract for a different term than recommended by the superintendent.

(c) **Dismissal During Term of Contract.** – A teacher shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure set forth in G.S. 115C-325.4.

(d) **Recommendation on Nonrenewal.** – If a superintendent decides not to recommend that the local board of education offer a renewed contract to a teacher, the superintendent shall give the teacher written notice of the decision no later than June 1.

(e) **Right to Petition for Hearing.** – A teacher shall have the right to petition the local board of education for a hearing no later than 10 days after receiving written notice. The local board may, in its discretion, grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the teacher making the petition of its decision whether to grant a hearing. If the request for a hearing is granted, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the teacher a renewed contract.

The board shall notify a teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for a hearing, the board shall provide the nonrenewal notification within 10 days of the hearing or such later date upon the written consent of the superintendent and teacher. A decision not to offer a teacher a renewed contract shall not be arbitrary, capricious, discriminatory, for personal or political reasons, or on any basis prohibited by State or federal law.

(f) Failure to Offer Contract or Notify on Nonrenewal of Contract. – If a teacher fails to receive a contract offer but does not receive written notification from the superintendent of a recommendation of nonrenewal, and the teacher continues to teach in the local school administrative unit without entering into a contract with the local board, upon discovery of the absence of contract, the board by majority vote shall do one of the following:

- (1) Offer the teacher a one-year contract expiring no later than June 30 of the current school year.
- (2) Dismiss the teacher and provide the teacher with the equivalent of one additional month's pay. A teacher dismissed as provided in this section shall be considered an at-will employee and shall not be entitled to a hearing or appeal of the dismissal.

(g) Local boards of education and teachers employed by the local board may mutually modify the terms of the contract to permit part-time employment. An individual that mutually modifies a full-time contract to permit part-time employment or enters into a part-time contract is not a teacher as defined in G.S. 115C-325.1(6). (2013-360, s. 9.6(b).)

**§ 115C-325.4. (See Editor's note for applicability) Dismissal or demotion for cause.**

(a) Grounds. – No teacher shall be dismissed, demoted, or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract except for one or more of the following:

- (1) Inadequate performance. In determining whether the professional performance of a teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Inadequate performance for a teacher shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard.
- (2) Immorality.
- (3) Insubordination.
- (4) Neglect of duty.
- (5) Physical or mental incapacity.
- (6) Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.

- (7) Conviction of a felony or a crime involving moral turpitude.
  - (8) Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
  - (9) Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
  - (10) Failure to comply with such reasonable requirements as the board may prescribe.
  - (11) Any cause which constitutes grounds for the revocation of the professional educator's license.
  - (12) Failure to maintain his or her license in a current status.
  - (13) Failure to repay money owed to the State in accordance with the provisions of Article 60 of Chapter 143 of the General Statutes.
  - (14) Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.
  - (15) A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding.
- (b) Dismissal Procedure. – The procedures provided in G.S. 115C-325.6 shall be followed for dismissals, demotions, or reductions to part-time employment for disciplinary reasons for any reason specified in subsection (a) of this section.
- (c) Local boards of education shall adopt a policy for implementing a reduction in force pursuant to subdivision (a)(15) of this section that includes the following criteria:
- (1) In determining which positions shall be subject to a reduction, a local board of education shall consider the following:
    - a. Structural considerations, such as identifying positions, departments, courses, programs, operations, and other areas where there are (i) less essential, duplicative, or excess personnel; (ii) job responsibility and position inefficiencies; (iii) opportunities for combined work functions; and (iv) decreased student or other demands for curriculum, programs, operations, or other services.
    - b. Organizational considerations, such as anticipated organizational needs of the local school administrative unit and program or school enrollment.
  - (2) In identifying which teachers in similar positions shall be subject to a dismissal, demotion, or reduction to employment on a part-time basis under the policy, a local school administrative unit shall consider work performance and teacher evaluations. (2013-360, s. 9.6(b); 2015-241, s. 8.38(a); 2017-189, s. 6(d).)

**§ 115C-325.5. (See Editor's note for applicability) Teacher suspension.**

(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without pay. Before suspending a teacher without pay, the superintendent shall

meet with the teacher and give him or her written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond. However, if the teacher is incarcerated or is in the custody of a local, State, private, or federal correctional facility, the superintendent shall not be required to meet with the teacher before suspending that teacher without pay but may instead provide written notice of the charges against the teacher, provide a written explanation of the basis for the charges, and provide an opportunity for the teacher to respond in writing. Within five days after a suspension under this subsection, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the teacher's personnel file.

(b) **Disciplinary Suspension Without Pay.** – A teacher recommended for disciplinary suspension without pay may request a hearing before the board. The hearing shall be conducted as provided in G.S. 115C-325.7. If no request is made within 15 days, the superintendent may file his or her recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

(c) **Suspension With Pay.** – If a superintendent believes that cause may exist for dismissing or demoting a teacher for any reasons specified in G.S. 115C-325.4 but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from the teacher's duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of the superintendent's action and shall notify the teacher within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to the teacher's duties immediately, and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request. However, if the superintendent and the teacher agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the teacher at any time during the period of the extension. (2013-360, s. 9.6(b); 2017-189, s. 4(e).)

**§ 115C-325.6. (See Editor's note for applicability) Procedure for dismissal or demotion of a teacher for cause.**

(a) **Recommendation of Dismissal or Demotion.** – A teacher may not be dismissed, demoted, or reduced to part-time employment for disciplinary reasons during the term of the contract except upon the superintendent's recommendation based on one or more of the grounds in G.S. 115C-325.4.



(b) Notice of Recommendation. – Before recommending to a board the dismissal or demotion of a teacher, the superintendent shall give written notice to the teacher by certified mail or personal delivery of the superintendent's intention to make such recommendation and shall set forth as part of the superintendent's recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the teacher and provide written notice of the charges against the teacher, an explanation of the basis for the charges, and an opportunity to respond if the teacher has not done so under G.S. 115C-325.5(a). The notice shall include a statement to the effect that the teacher, within 14 days after the date of receipt of the notice, may request a hearing before the board on the superintendent's recommendation. A copy of Part 3 of Article 22 of Chapter 115C of the General Statutes shall also be sent to the teacher.

(c) Request for Hearing. – Within 14 days after receipt of the notice of recommendation, the teacher may file with the superintendent a written request for a hearing before the board on the superintendent's recommendation. The superintendent shall submit his or her recommendation to the board. Within five days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the teacher by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the teacher, unless both parties agree to an extension. The hearing shall be conducted as provided in G.S. 115C-325.7.

(d) No Request for Hearing. – If the teacher does not request a hearing before the board within the 14 days provided, the superintendent may submit his or her recommendation to the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the teacher without pay. (2013-360, s. 9.6(b).)

#### **§ 115C-325.7. (See Editor's note for applicability) Hearing before board.**

The following procedures shall apply for a board hearing for dismissal, demotion, reduction to part-time employment for disciplinary reasons, or disciplinary suspension without pay:

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.
- (3) At the hearing, the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a dismissal, demotion, reduction to part-time employment for disciplinary reasons, or disciplinary suspension without pay.

- (4) Rules of evidence shall not apply to a hearing under this subsection, and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.
- (5) At least five days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.
- (6) At least three days before the hearing, the teacher shall provide the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the teacher intends to present.
- (7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this section.
- (8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal, demotion, reduction to part-time employment for disciplinary reasons, or disciplinary suspension without pay.
- (9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
- (10) The superintendent shall provide for making a transcript of the hearing. The teacher may request and shall receive at no charge a transcript of the proceedings. (2013-360, s. 9.6(b).)

**§ 115C-325.8. (See Editor's note for applicability) Right of appeal.**

(a) A teacher who (i) has been dismissed, demoted, or reduced to employment on a part-time basis for disciplinary reasons during the term of the contract as provided in G.S. 115C-325.4, or has received a disciplinary suspension without pay as provided in G.S. 115C-325.5, and (ii) requested and participated in a hearing before the local board of education, shall have a further right of appeal from the final decision of the local board of education to the superior court of the State on one or more of the following grounds that the decision:

- (1) Is in violation of constitutional provisions.
- (2) Is in excess of the statutory authority or jurisdiction of the board.
- (3) Was made upon unlawful procedure.
- (4) Is affected by other error of law.
- (5) Is unsupported by substantial evidence in view of the entire record as submitted.
- (6) Is arbitrary or capricious.

(b) An appeal pursuant to this section must be filed within 30 days of notification of the final decision of the local board of education and shall be decided on the administrative record. The superior court shall have authority to affirm or reverse the local board's decision or remand the matter to the local board of education. The superior court shall not have authority to award monetary damages or to direct the local board of education to enter into an employment contract of more than one year, ending June 30. (2013-360, s. 9.6(b).)

**§ 115C-325.9. (See Editor's note for applicability) Teacher resignation.**

(a) Teacher Resignation Following Recommendation for Dismissal. – If a teacher has been recommended for dismissal under G.S. 115C-325.4 and the teacher chooses to resign without the written agreement of the superintendent, then:

- (1) The superintendent shall report the matter to the State Board of Education.
- (2) The teacher shall be deemed to have consented to (i) the placement in the teacher's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this teacher to the State Board of Education to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.
- (3) The teacher shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the teacher's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the teacher's license within 45 days from the date of resignation.

(b) Thirty Days' Notice Resignation Requirement. – A teacher who is not recommended for dismissal should not resign during the term of the contract without the consent of the superintendent unless he or she has given at least 30 days' notice. If a teacher who is not recommended for dismissal does resign during the term of the contract without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's license for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file. If a teacher's criminal history is relevant to the teacher's resignation, regardless of whether the teacher has given at least 30 days' notice, the board shall report to the State Board of Education the reason for an employee's resignation. (2013-360, s. 9.6(b); 2017-189, s. 4(f).)

**§ 115C-325.10. (See Editor's note for applicability) Application to certain institutions.**

Notwithstanding any law or regulation to the contrary, this Part shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services and Public Instruction and the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, regardless of the age of the students. (2013-360, s. 9.6(b); 2017-186, s. 2(fffff).)

**§ 115C-325.11. (See Editor's note for applicability) Dismissal of school administrators and teachers employed in low-performing residential schools.**

(a) Notwithstanding any other provision of this section or any other law, this section shall govern the dismissal by the State Board of Education of teachers, principals, assistant principals, directors, supervisors, and other licensed personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team. The State Board shall dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

(b) The State Board may dismiss a teacher, principal, assistant principal, director, supervisor, or other licensed personnel when:

- (1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school.
- (2) That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other licensed personnel for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

Within 30 days of any dismissal under this subsection, a teacher, principal, assistant principal, director, supervisor, or other licensed personnel may request a hearing before a panel of three members designated by the State Board. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this section or any other law, this subsection shall govern the dismissal by the State Board of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

Within 30 days of any dismissal under this subsection, a licensed staff member may request a hearing before a panel of three members designated by the State Board. The State

Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this subsection. Decisions of the panel may be appealed on the record to the State Board.

(d) The State Board or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the State Board from refusing to renew the contract of any person employed in a school identified as low-performing.

(e) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section. (2013-360, s. 9.6(b).)

**§ 115C-325.12. (See Editor's note for applicability) Procedure for dismissal of principals employed in low-performing schools.**

(a) Dismissal of Principals Assigned to Low-Performing Schools With Assistance Teams. – Notwithstanding any other provision of this Part or any other law, this section governs the State Board's dismissal of principals assigned to low-performing schools to which the State Board has assigned an assistance team.

(b) Authority of State Board to Dismiss Principal. – The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the State Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

(c) Procedures for Dismissal of Principal. –

- (1) If the State Board through its designee recommends the dismissal of a principal under this section, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.
- (2) The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.
- (3) The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion of a teacher.

- (4) If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.
  - (5) In all hearings under this section, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under this section, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a teacher under G.S. 115C-325.4.
  - (6) In all hearings under this section, two consecutive evaluations that include written findings and recommendations regarding that principal's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.
  - (7) The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this section. Decisions of the panel may be appealed on the record to the State Board.
- (d) The State Board of Education or a local board may terminate the contract of a principal dismissed under this section.
  - (e) Neither party to a school administrator contract is entitled to damages under this section.
  - (f) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section. (2013-360, s. 9.6(b).)

**§ 115C-325.13. (See Editor's note for applicability) Procedure for dismissal of teachers employed in low-performing schools.**

(a) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher, assistant principal, director, or supervisor.

(b) The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

- (1) The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and
- (2) That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325.4 for dismissal or demotion for cause.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(c) Notwithstanding any other provision of this Part or any other law, this section shall govern the State Board's dismissal of licensed staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed staff member.

(d) A licensed staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this section. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed staff members recommended for dismissal under this section. Decisions of the panel may be appealed on the record to the State Board.

(e) The State Board of Education or a local board may terminate the contract of a teacher, assistant principal, director, or supervisor dismissed under this section.

(f) Neither party to a school administrator or teacher contract is entitled to damages under this section.

(g) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this section. (2013-360, s. 9.6(b).)

**§ 115C-326: Repealed by Session Laws 1998-5, s. 3.**

**§ 115C-326.1: Repealed by Session Laws 1985, c. 479, s. 52.**

#### Part 3A. Job Sharing by School Employees.

##### **§ 115C-326.5. Job sharing by school employees.**

(a) The General Assembly finds that there is a shortage of qualified public school employees available in certain geographical areas of the State. The elimination of administrative and fiscal limitations on job-sharing arrangements would make employment in a public school an attractive option for well-qualified persons who do not wish to work full time.

(b) A "school employee in a job-sharing position" is a person who is employed by a local board of education as a public school employee for at least fifty percent (50%) of the applicable workweek, as defined by that local board of education.

(c) The State Board of Education shall adopt rules to facilitate job sharing by public school employees. These rules shall provide that an employee in a job-sharing position shall receive paid legal holidays, annual vacation leave, sick leave, and personal leave on a pro rata basis. Such an employee shall also receive service credit under the Teachers' and State Employees' Retirement System as provided in G.S. 135-4(b) and insurance benefits as provided in Article 3 of Chapter 135 of the General Statutes. (2003-358, s. 2.)

Part 4. Personnel Administration Commission for Public School Employees.

**§§ 115C-327 through 115C-329: Repealed by Session Laws 1997-18, s. 10.**

Part 5. Employment of Handicapped.

**§ 115C-330. Employment of handicapped.**

The Board and each local educational agency shall make positive efforts to employ and advance in employment qualified handicapped individuals. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

**§ 115C-331. Reserved for future codification purposes.**

Part 6. Criminal History Checks.

**§ 115C-332. School personnel criminal history checks.**

(a) As used in this section:

- (1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; and Article 60,



Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

- (2) "School personnel" means any:
- a. Employee of a local board of education whether full-time or part-time, or
  - b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Public Safety shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Public Safety to (i) be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the

applicant or employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The local board may delegate any of the duties in this subsection to the superintendent.

(e) The local board of education, or the superintendent if designated by the local board of education, shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, the Superintendent of Public Instruction, or any of their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(i) The local board of education may adopt a policy providing for periodic checks of criminal history of employees. Local boards of education shall not require employees to pay for the criminal history check authorized under this subsection. A local board of education shall indicate, upon inquiry by any other local board of education, charter school, or regional school in the State as to the reason for an employee's resignation or dismissal, if an employee's criminal history was relevant to the employee's resignation or dismissal. (1995, c. 373, s. 1; 2001-376, s. 1; 2012-12, s. 2(rr); 2014-100, s. 17.1(o); 2015-181, s. 47; 2016-126, 4th Ex. Sess., s. 20; 2017-189, s. 4(g).)

#### **§ 115C-332.1. Sex offender registries checks for certain contractual personnel.**

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job. For purposes of this section, the term "contractual personnel" does not include any person covered under G.S. 115C-332.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students. (2008-117, s. 21.)

#### Part 7. Personnel Evaluations.

#### **§ 115C-333. Evaluation of licensed employees including certain superintendents; mandatory improvement plans; State board notification upon dismissal of employees.**

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all licensed employees assigned to a school that has been identified as low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher with career status as defined under G.S. 115C-325(a)(6), or a teacher as defined under G.S. 115C-325.1(6), either the principal, the assistant principal who supervises the teacher, or an assistance team assigned under G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

All teachers in low-performing schools who have been employed for less than three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. For high schools with at least 1,500 students, the annual evaluation may be conducted by an assistant principal, provided that at least one evaluation in such a teacher's first three years of employment is conducted by a principal. All teachers in low-performing schools who have been licensed as a teacher for less than two years shall be observed at least three times annually by the principal or the principal's designee, at least once annually by a teacher, and at least once annually by a principal, and at least two of those observations shall be conducted in the first semester of the school year, and if practicable, at least one of those observations shall be conducted within the first grading period of the school year. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Plans. –

- (1) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
- (1a) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.
- (2) Repealed by Session Laws 2011-348, s. 2, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
- (2a) If a licensed employee in a low-performing school receives a rating on any standard on an evaluation that is below proficient or otherwise represents unsatisfactory or below standard performance in an area that the licensed employee was expected to demonstrate, the individual or team that conducted the evaluation shall recommend to the superintendent that (i) the employee receive a mandatory improvement plan designed to improve the employee's performance, (ii) the superintendent recommend to the local board that if the employee is a career status teacher the employee be dismissed or demoted and if the employee is a teacher on contract the teacher's contract not be recommended for renewal, or (iii) if the employee engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment that a proceeding for immediate dismissal or demotion be instituted. If the individual or team that conducted the evaluation elects not to make any of the above recommendations, the said individual or team shall notify the superintendent of this decision. The superintendent shall determine whether to develop a mandatory improvement plan, to not recommend renewal of the employee's contract, or to recommend a dismissal proceeding.
- (3) If at any time a licensed employee engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any

ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan.

- (4) Mandatory improvement plans shall be developed by the person who evaluated the licensed employee or the employee's supervisor unless the evaluation was conducted by an assistance team. If the evaluation was conducted by an assistance team, that team shall develop the mandatory improvement plan in collaboration with the employee's supervisor. Mandatory improvement plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating licensed employees and developing effective mandatory improvement plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of mandatory improvement plans and policies for the implementation of monitored and directed growth plans.

(c) Reassessment of Employee in a Low-Performing School. – After the expiration of the time period for the mandatory improvement plan under subdivision (2a) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assistance team shall assess the performance of the employee of the low-performing school a second time. If the superintendent, superintendent's designee, or assistance team determines that the employee has failed to become proficient in any of the performance standards articulated in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent shall recommend that if the employee is a teacher with career status the teacher be dismissed or demoted under G.S. 115C-325, or if the employee is a teacher on contract the employee's contract not be renewed or if the employee has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the employee be immediately dismissed or demoted under G.S. 115C-325.4. The results of the second assessment shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If a local board dismisses an employee of a low-performing school who is a teacher with career status for any reason except a reduction in force under G.S. 115C-325(e)(1)l., or dismisses an employee who is a teacher on contract for cause or elects to not renew an employee's contract as a result of a superintendent's recommendation under subsection (b) or (c) of this section, it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop a mandatory improvement plan to assist the employee, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives a rating on any standard that was identified as an area of concern on the mandatory improvement plan that is again below proficient or otherwise represents

unsatisfactory or below standard performance, the local board shall notify the State Board and the State Board shall initiate a proceeding to revoke the employee's license under G.S. 115C-270.35. If on this next evaluation the employee receives at least a proficient rating on all of the performance standards that were identified as areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is a teacher with career status and is subsequently dismissed under G.S. 115C-325 except for a reduction in force, or the employee is a teacher on contract subsequently dismissed under G.S. 115C-325.4.

(e) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(f) Local Board Evaluation of Certain Superintendents. – Each year the local board of education shall evaluate the superintendent employed by the local school administrative unit and report to the State Board the results of that evaluation if during that year the State Board designated as low-performing:

- (1) One or more schools in a local school administrative unit that has no more than 10 schools.
- (2) Two or more schools in a local school administrative unit that has no more than 20 schools.
- (3) Three or more schools in a local school administrative unit that has more than 20 schools. (1998-5, s. 4; 1998-220, ss. 14, 15; 2011-348, s. 2; 2013-360, s. 9.7(i), (s); 2016-94, s. 8.32(h); 2016-126, 4th Ex., Sess., s. 21; 2017-157, ss. 2(n), 3(a); 2017-189, s. 6(e).)

**§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing; mandatory improvement plans; State Board notification upon dismissal of teachers.**

(a) Annual Evaluations. – All teachers who are assigned to schools that are not designated as low-performing and who have not been employed for at least three consecutive years shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. For high schools with at least 1,500 students, the annual evaluation may be conducted by an assistant principal, provided that at least one evaluation

in such a teacher's first three years of employment is conducted by a principal. All teachers who are assigned to schools that are not designated as low-performing and who have been licensed as a teacher for less than two years shall be observed at least three times annually by the principal or the principal's designee, at least once annually by a teacher, and at least once annually by a principal, and at least two of those observations shall be conducted in the first semester of the school year, and if practicable, at least one of those observations shall be conducted within the first grading period of the school year. All teachers with career status or on a four-year contract who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow teachers with career status or on a four-year contract to be evaluated more or less frequently, provided that such rules are not inconsistent with State or federal requirements. Local boards also may adopt rules requiring the annual evaluation of nonlicensed employees. A local board shall use the performance standards and criteria adopted by the State Board and may adopt additional evaluation criteria and standards. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) **Mandatory Improvement Plans for Teachers.** – If, in an observation report or year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents unsatisfactory or below standard performance on any standard that the teacher was expected to demonstrate, the principal may place the teacher on a mandatory improvement plan as defined in G.S. 115C-333(b)(1a). The mandatory improvement plan shall be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

If at any time a teacher engages in inappropriate conduct or performs inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, and immediate dismissal or demotion is not appropriate, then the principal may immediately institute a mandatory improvement plan regardless of any ratings on previous evaluations. The principal shall document the exigent reason for immediately instituting such a plan. The mandatory improvement plan shall be developed by the principal in consultation with the teacher. The teacher shall have five instructional days from receipt of the proposed mandatory improvement plan to request a modification of such plan before it is implemented, and the principal shall consider such suggested modifications before finalizing the plan. The teacher shall have at least 60 instructional days to complete the mandatory improvement plan. The State Board shall develop guidelines that include strategies to assist local boards in evaluating teachers and developing effective mandatory improvement plans. Local boards may adopt policies for the implementation of mandatory improvement plans under this section.

(c) **Observation by a Qualified Observer.** –

- (1) The term "qualified observer" as used in this section is any administrator or teacher who is licensed by the State Board of Education and working in North Carolina; any employee of the North Carolina Department of Public Instruction who is trained in evaluating licensed employees; or any

instructor or professor who teaches in an accredited North Carolina school of education and holds an educator's license.

- (2) The local board of education shall create a list of qualified observers who are employed by that board and available to do observations of employees on mandatory improvement plans. This list shall be limited to names of administrators and teachers selected by the local board of education. The local board of education shall strive to select administrators and teachers with excellent reputations for competence and fairness.
- (3) Any teacher, other than a teacher assigned to a school designated as low-performing, who has been placed on a mandatory improvement plan shall have a right to be observed by a qualified observer in the area or areas of concern identified in the mandatory improvement plan. The affected teacher and the principal shall jointly choose the qualified observer within 20 instructional days after the commencement of the mandatory improvement plan. If the teacher and the principal cannot agree on a qualified observer within this time period, they each shall designate a person from the list of qualified observers created pursuant to subdivision (2) of this subsection, and these two designated persons shall choose a qualified observer within five instructional days of their designation. The qualified observer shall draft a written report assessing the teacher in the areas of concern identified in the mandatory improvement plan. The report shall be submitted to the principal before the end of the mandatory improvement plan period. If a teacher or administrator from the same local school administrative unit is selected to serve as the qualified observer, the administration of the local school administrative unit shall provide such qualified observer with the time necessary to conduct the observation and prepare a report. If someone who is not employed by the same local school administrative unit is selected to serve as the qualified observer, the teacher who is the subject of the mandatory improvement plan will be responsible for any expenses related to the observations and reports prepared by the qualified observer. The qualified observer shall not unduly disrupt the classroom when conducting an observation.
- (4) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because of the employee's service or completion of a report as an objective observer pursuant to this subsection, unless the employee's report contained material information that the employee knew was false.

(d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan under subsection (b) of this section, the principal shall assess the performance of the teacher a second time. The principal shall also review and consider any report provided by



the qualified observer under subsection (c) of this section if one has been submitted before the end of the mandatory improvement plan period. If, after the second assessment of the teacher and consideration of any report from the qualified observer, the superintendent or superintendent's designee determines that the teacher has failed to become proficient in any of the performance standards identified as deficient in the mandatory improvement plan or demonstrate sufficient improvement toward such standards, the superintendent may recommend that a teacher with career status be dismissed or demoted under G.S. 115C-325, or if the teacher is on contract that the teacher's contract not be renewed or if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance causes substantial harm to the educational environment, that the teacher be immediately dismissed or demoted under G.S. 115C-325.4. The results of the second assessment produced pursuant to the terms of this subsection shall constitute substantial evidence of the teacher's inadequate performance.

(e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a mandatory improvement plan as described in this section shall not prohibit a superintendent from initiating a dismissal proceeding against a teacher under the provisions of G.S. 115C-325 or G.S. 115C-325.4. However, the superintendent shall not be entitled to the substantial evidence provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

(f) State Board Notification. – If a local board dismisses a teacher with career status for any reason except a reduction in force under G.S. 115C-325(e)(1)/, or dismisses a teacher on contract for cause or elects to not renew a teacher's contract as a result of a superintendent's recommendation under subsection (d) of this section, it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those teachers. If a local board hires one of these teachers, within 60 days the superintendent or the superintendent's designee shall observe the teacher, develop a mandatory improvement plan to assist the teacher, and submit the plan to the State Board. The State Board shall review the mandatory improvement plan and may provide comments and suggestions to the superintendent. If on the next evaluation the teacher receives a rating on any standard that was an area of concern on the mandatory improvement plan that is again below proficient or a rating that otherwise represents unsatisfactory or below standard performance, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-270.35. If on the next evaluation the teacher receives at least a proficient rating on all of the overall performance standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board that the teacher is in good standing, and the State Board shall not continue to provide the teacher's name to local boards under this subsection unless the teacher has career status and is subsequently dismissed under G.S. 115C-325 except for a reduction in force or is a teacher on contract who is subsequently dismissed under G.S. 115C-325.4. If, however, on this next evaluation the teacher receives a developing rating on any standards that were areas of concern on the mandatory improvement plan, the teacher shall have one more year to bring the rating to proficient if

the local board elects to renew the teacher's contract. If by the end of this second year the teacher is not proficient in all standards that were areas of concern on the mandatory improvement plan, the local board shall notify the State Board, and the State Board shall initiate a proceeding to revoke the teacher's license under G.S. 115C-270.35.

(g) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes. (2011-348, ss. 3, 8.6; 2013-360, s. 9.7(j), (t); 2016-94, s. 8.32(i); 2016-126, 4th Ex. Sess., s. 22; 2017-157, ss. 2(n), 3(b); 2017-189, s. 6(f).)

#### **§ 115C-333.2. Teacher evaluation reports.**

Each local school administrative unit shall ensure that individual teachers are provided access to school-level value-added data, the teacher's own value-added data, when applicable, and the teacher's evaluation dashboard through the Education Value-Added Assessment System (EVAAS). The principal of each school shall notify teachers at least annually when EVAAS data has been updated to reflect teacher performance from the previous school year. (2015-241, s. 8.42(a).)

#### **§ 115C-334. Assessment teams.**

The State Board shall develop guidelines for local boards to use to create assessment teams. A local board shall assign an assessment team to every low-performing school in the local school administrative unit that has not received an assistance team. Local boards shall ensure that assessment team members are trained in the proper administration of the employee evaluation used by the local school administrative unit. If service on an assessment team is an additional duty for an employee of a local board, the board may pay the employee for that additional work.

Assessment teams shall have the following duties:

- (1) Conduct evaluations of licensed employees in low-performing schools;
- (2) Provide technical assistance and training to principals, assistant principals, superintendents, and superintendents' designees who conduct evaluations of licensed employees;
- (3) Develop mandatory improvement plans for licensed employees; and
- (4) Assist principals, assistant principals, superintendents, and superintendents' designees in the development and implementation of mandatory improvement plans. (1998-5, s. 4; 2011-348, s. 7.)

**§ 115C-335. Development of performance standards and criteria for licensed employees; training and remediation programs.**

(a) Development of Performance Standards. – The State Board, in consultation with local boards of education, shall revise and develop uniform performance standards and criteria to be used in evaluating certified public school employees, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The State Board shall develop rules regarding the use of these standards and criteria. The State Board also shall develop guidelines for evaluating superintendents. The guidelines shall include criteria for evaluating a superintendent's effectiveness in providing safe schools and enforcing student discipline.

(b) Training. – The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of appropriate professional growth and mandatory improvement plans, the process for contract nonrenewal, and the dismissal process under Part 3 of Article 22 of this Chapter. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for licensed public school employees that may be included in a mandatory improvement plan created under G.S. 115C-333(b) or G.S. 115C-333.1(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units. (1998-5, s. 4; 2011-348, s. 8; 2013-360, s. 9.7(k).)

**§§ 115C-335.1 through 115C-335.4. Reserved for future codification purposes.**

**Part 8. Sexual Harassment Policies.**

**§ 115C-335.5. Policies addressing harassment of school employees; protection against retaliation for reporting harassment.**

(a) Each local board of education may adopt a policy addressing the sexual harassment of local board employees by students, other local board employees, or school board members. The

policy may, at a minimum, set out (i) the consequences of sexually harassing school employees and (ii) a procedure for reporting incidents of sexual harassment.

(b) No local board of education or employee of a local board shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee files a written complaint alleging sexual harassment by students, other local board employees, or school board members, unless the employee reporting the harassment knew or should have known the report was false. (1999-352, s. 1; 2001-173, s. 1.)

## Part 9. Equal Access Act.

### **§ 115C-335.9. Equal access for all education employee associations.**

(a) As used in this section, the following definitions apply:

- (1) "Education employee association" includes teacher associations, teacher organizations, and classified education employees' associations.
- (2) "School" means a charter school or a school operated by a local school administrative unit, the State Board of Education, or a State agency.

(b) It is the intent of the General Assembly that all education employee associations have equal access to employees at schools and that schools not favor nor endorse an education employee association; therefore, neither a local school administrative unit nor a school shall do any of the following:

- (1) Grant access to employees' physical or electronic mailboxes to an education employee association unless it gives such access to all education employee associations operating in the local school administrative unit.
- (2) Permit an education employee association to attend new teacher or employee orientations to recruit members unless it permits all education employee associations operating in the local school administrative unit to attend.
- (3) Give an education employee association preferential treatment through procedures, policies, or any other means. This subdivision does not authorize any payroll deduction for any association unless authorized by law for that association.
- (4) Endorse one education employee association over another.
- (5) Refer to days or breaks in a school calendar by the name of an employee education association.

(c) A school shall not discourage or prohibit an employee from joining an organization or showing preferences toward any educational association. (2012-179, s. 1(b).)